In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1049

WEATHERFORD OIL TOOL COMPANY, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court wrote no opinion. The opinion of the court of appeals (Pet. App. 20–26) is reported at 403 F. 2d 344 *sub nom. Hall* v. *United States.*

JURISDICTION

The judgment of the court of appeals was entered on November 22, 1968 (Pet. App. 27–28), and a petition for rehearing was denied on January 17, 1969 (Pet. App. 29). The petition for a writ of certiorari was filed on February 17, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

336-762—69

QUESTION PRESENTED

Whether a proceeding to enforce a tax lien against property a taxpayer fraudulently transferred is barred by the statute of limitations governing the initiation of tax collection suits.

STATUTE INVOLVED

Section 6502 of the Internal Revenue Code of 1954 is set out at pages 3 and 4 of the Petition.

STATEMENT

The government assessed unpaid federal income taxes for the years 1947 and 1948 against Jesse E. Hall, Sr. and his wife, Rhoda O. Hall, on December 11, 1959; unpaid taxes for 1956 were assessed on June 3, 1960. Mr. Hall died in August of 1964. On April 6, 1965, the government filed this action in the United States District Court for the Northern District of Texas to reduce the Halls' tax liabilities to judgment. An amended complaint of May 26, 1966, named the administrator of Mr. Hall's estate as a party defendant (R. 10–22, 26–33; Pet. App. 21).

On October 31, 1966, more than six years after the tax assessments against the Halls, the government filed its second amended complaint, which added as defendants various persons and corporations who allegedly received property transferred by the Halls in fraud of their present and future creditors. The complaint prayed for judgment against the Halls and the administrator of Mr. Hall's estate; that the conveyances alleged to have been fraudulent be set aside;

and that the liens of the United States then be enforced against that property (R. 35–86; Pet. App. 21).

On October 31, 1966, a default judgment in the amount of $1,942,856 was entered against Mrs. Hall; and on November 21, 1966, a partial summary judgment for $1,941,841 was entered against the administrator of Mr. Hall's estate (R. 86–90; Pet. App. 21). Petitioners—who are among the persons and corporations added as defendants by the second amended complaint—thereafter moved for summary judgment, claiming that the action was barred as to them by the six-year limitations period of Section 6502 of the Internal Revenue Code of 1954, since they admittedly were not brought into the action during that period (R. 106–107; Pet. App. 20–21). The district court overruled their motion but granted leave to take an interlocutory appeal to the court of appeals. The court of appeals consented to hear the interlocutory appeal (R. 107–113, 123), and affirmed the judgment of the district court (Pet. App. 20–26, 27).

ARGUMENT

The decision that Section 6502 of the Internal Revenue Code of 1954 does not bar the action against the petitioners was clearly correct, and there is no conflict among the circuits or other reason why the petition for a writ of certiorari should be granted.

Section 6502 provides that a tax may be collected by a proceeding begun within six years after a timely assessment of the tax. In this case, there was a timely assessment of tax against taxpayers, the Halls, and court proceedings were timely begun against them,

leading to judgments which stand uncontested. Although petitioners were brought into the action more than six years after the assessments were made, the United States is not seeking to collect a tax from them personally—it claims neither personal liability nor a money judgment from them.[1] Rather, the complaint alleges that the petitioners received property the taxpayers transferred in fraud of their creditors, and seeks to enforce the government's tax lien on that property. In essence, the proceeding is an action *in rem* on the judgment; if the government can show that the transfers were fraudulent and thus void, it is entitled to collect its judgment against the property as the *taxpayers'* asset.[2] Thus, as the court of appeals stated (Pet. App. 23), the issue here is "whether the statute of limitation of § 6502 is applicable to bar a suit against third persons in aid of collecting a judgment against a taxpayer." The courts below properly answered this question in the negative.

United States v. *Updike,* 281 U.S. 489, on which petitioners principally rely, was a case in which the taxpayer-transferor was never sued; the only suit brought was against the transferees, and that after the statutory period for suing to collect the tax expired. The cases following *Updike* involve similar facts. In none was there a judgment on which the

[1] Thus Section 6901 of the Code, which relates to assessments and collection actions against transferees, does not come into play in this case.

[2] Since petitioners moved for summary judgment on the Section 6502 issue, submitting neither affidavits nor evidence, it must be assumed that the allegations of the complaint are sufficient to set the conveyances aside as fraudulent or voluntary.

United States was entitled to collect.[3] *United States* v. *Oscar Frommel & Bro.*, 50 F. 2d 73 (C.A. 2, Manton, J.), certiorari denied, 284 U.S. 647, is the only prior reported case directly in point; there, as here, the United States obtained a judgment against a taxpayer in a suit seasonably brought, and then proceeded against the taxpayer's transferee after the Section 6502 period had elapsed. In that case, as here, it was held that the action was not barred.

The proceeding against the petitioners is "in the nature of an ancillary proceeding to collect a judgment [from third parties]" (Pet. App. 24)—as characterized by this Court in *Pierce* v. *United States,* 255 U.S. 398, 402, "an equitable execution comparable to proceedings supplementary to execution." The government has the same right to proceed against fradulent transferees in this tax case as it would on a judgment in any other civil action. Obviously, this right is not governed by Section 6502. As the court of appeals held, Section 6502 applies only in cases like *Updike,* where the first effort at collecting taxes by suit is directly against the transferees and thus the suit is like any other action to collect taxes for limitations purposes.

[3] *Bowers* v. *N.Y. & Albany Co.*, 273 U.S. 346, held that an effort to collect taxes by distraint was a "proceeding" subject to the statutory bar. *Wisconsin* v. *Pelican Ins. Co.*, 127 U.S. 265, and *Huntington* v. *Attrill*, 146 U.S. 657, involved the wholly distinct question whether particular judgments should be characterized as "penal" in the international sense, in which event this Court would lack original jurisdiction of a suit brought by a State on its judgment against a citizen of another State, and the Full Faith and Credit Clause of the Constitution would not apply.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JOHNNIE M. WALTERS,
Assistant Attorney General.

CROMBIE J. D. GARRETT,
STEPHEN G. FUERTH,
LORING W. POST,
Attorneys.

MARCH 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969